

COMMITTEE FOR IDAHO'S HIGH DESERT

IBLA 93-232

Decided March 16, 1993

Appeal from a decision by the Manager, Bennett Hills Resource Area, Idaho, Bureau of Land Management, finding no significant impact based upon Environmental Assessment No. ID050-EA-92-144, and approving Plan of Operations No. IDI 29452.

Motion for extension of time denied.

1. Administrative Procedure: Generally--Rules of Practice: Appeals: Effect of--Rules of Practice: Appeals: Extensions of Time--Rules of Practice: Appeals: Motions--Rules of Practice: Appeals: Stay

Except as otherwise provided by law or other pertinent regulation, a decision issued before Feb. 18, 1993, will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. It is not necessary to seek a stay of a decision issued prior to Feb. 18, 1993, which is not automatically effective by law or pertinent regulation, and a request for an extension of time in which to file a stay request will be denied.

APPEARANCES: Linda D. Hagadorn, Secretary, Committee for Idaho's High Desert, Boise, Idaho.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On February 4, 1993, the Manager of the Bennett Hills Resource Area, Idaho, Bureau of Land Management (BLM), issued a finding of no significant impact (FONSI) and record of decision approving Plan of Operations No. IDI 29452 for the Corridor Placer Claim #26, located in the Shoshone Wilderness Study Area in the Bennett Hills Resource Area, Idaho. The FONSI determination was based upon an Environmental Assessment of the proposed operation (No. ID050-EA-92-144), required for proposed mining within a wilderness study area. See 43 CFR 3802.3-1.

On March 1, 1993, the Committee for Idaho's High Desert (Committee) filed a notice of appeal of BLM's February 4 decision. On March 5, the

Committee filed a request for a 15 \_ day extension of time in which to file a petition for a stay of the decision. In its request the Committee noted a recent amendment to 43 CFR 4.21, which would cause a decision to become effective the day after expiration of the time allowed for filing a notice of appeal, unless a petition for a stay pending appeal is filed with a timely notice of appeal. See 43 CFR 4.21(a)(2), 58 FR 4939 at 4942 (Jan. 19, 1993).

[1] Under 43 CFR 3802.5, a decision approving a mining plan of operations for operations within a wilderness study area may be appealed to this Board pursuant to 43 CFR Part 4. Since nothing in that regulation provides for immediate effect of the BLM decision (compare 43 CFR 3809.4(f)), 43 CFR 4.21 is applicable to this appeal. However, the above- noted amendment to 43 CFR 4.21 became effective February 18, 1993, and the "Department \* \* \* has concluded that the new rule shall not be given retroactive effect" because "it would be unfair to change the rules in mid-appeal for existing appellants." 58 FR at 4940 (Jan. 19, 1993).

At the time the decision on appeal issued, 43 CFR 4.21(a) provided that:

Except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal.

Thus, when the decision on appeal was issued, it was subject to this automatic stay, which remained in effect when the newly promulgated regulations became effective on February 18, 1993. No request for a stay is necessary and the request for an extension of time in which to file a stay request is therefore denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion for an extension of time for filing a request for a stay is denied.

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R. W. Mullen  
Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge

